

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of MARION DEMKOWSKI, Deceased.

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DAVID DEMKOWSKI, Personal Representative  
of the Estate of MARION DEMKOWSKI,  
Deceased,

UNPUBLISHED  
October 27, 2005

Petitioner-Appellee,

v

JAMES DEMKOWSKI,

No. 254705  
Monroe Probate Court  
LC No. 2002-000304-DE

Respondent-Appellant,

and

BETH DEMKOWSKI,

Respondent.

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Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Respondent James Demkowski, a former co-personal representative of the decedent's estate, appeals as of right from the probate court's order granting the petition of successor personal representative David Demkowski, petitioner, to complete the estate settlement and allow his amended first and final account. We affirm.

Although the decedent passed on November 26, 2001, respondent and the co-personal representative did not commence probate proceedings until June 3, 2002, when letters of authority were issued. In July 2003, a beneficiary of the decedent's will petitioned the probate court for removal of the co-personal representatives, seeking an accounting and closure of the estate. In response to the petition, the probate court gave the co-personal representatives two weeks to close the estate or the removal of the representatives would occur and a successor would be appointed. The probate court expressed concern regarding the duration of the proceeding in light of the simplicity of the estate. The estate was not resolved within two weeks, and petitioner was appointed as the successor. In November 2003, petitioner filed a sworn statement to close the estate. Petitioner filed a first and final account that set forth the funds

available for distribution. Petitioner also indicated a payment to respondent of \$5,452.17 for receipted expenses. Respondent objected to the accounting because of the failure to pay him all of his requested expenses. Petitioner moved to surcharge respondent, alleging that legal expenses were incurred in having respondent removed as co-personal representative, the defense of the claim, and the failure to close the estate. The probate court granted the motion to surcharge in the amount of outstanding fees requested by respondent. Respondent now appeals as of right.

Respondent alleges that the trial court erred in failing to determine the timeliness and propriety of the claim filed against the estate and erred in assessing a surcharge. We disagree. An appellate court reviews the probate court's findings of fact for clear error. *In re Seymour Estate*, 258 Mich App 249, 255 n 5; 671 NW2d 109 (2003). The probate court's decision regarding a personal representative's compensation is reviewed for an abuse of discretion. *In re Baird Estate*, 137 Mich App 634, 637; 357 NW2d 912 (1984). The burden of proof is on the claimant to satisfy the probate court that the services rendered were necessary and the charges were reasonable. *Id.* The failure to present records regarding services is weighed against the claimant. *Id.* at 638. "Absent proof of the necessary services performed and their value, no compensation may be awarded." *Id.* at 639.

Decedent's estate was not closed pursuant to petitioner's sworn statement based on MCL 700.3954, but rather pursuant to a petition for a judicial order of complete estate settlement. See MCL 700.3952. A petition based on MCL 700.3952 may request judicial approval of a final account. MCL 700.3952(2). The amended first and final account approved by the probate court was not affected by respondent's claims for compensation and reimbursement because the court ordered a surcharge against respondent in amount equal to, but not exceeding, any unpaid claims. A surcharge proceeding is an appropriate means of determining an issue of liability between the estate and the personal representative. MCL 700.3808(4); see also MCL 700.1308(1); *In re Thacker Estate*, 137 Mich App 253, 263; 358 NW2d 342 (1984). The fact that co-personal representatives are appointed does not preclude liability. See *In re Tolfree Estate*, 347 Mich 272, 281; 79 NW2d 629 (1956). Because the surcharge effectively negated any unpaid claim, the probate court's failure to rule on the merits of respondent's claims for compensation and reimbursement was harmless. Under the circumstances, we cannot conclude that the trial court's factual findings regarding the surcharge were clearly erroneous. *Seymour, supra.*

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Helene N. White  
/s/ Peter D. O'Connell